

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

GENBIOPRO, INC.,

Plaintiff,

v.

**KRISTINA RAYNES, in her official capacity
as Prosecuting Attorney of Putnam County,
AND PATRICK MORRISEY, in his official
capacity as Attorney General of West Virginia,
Defendants.**

**Civil Action No.: 3:23-cv-00058
(Hon. Robert C. Chambers)**

**MOTION TO AMEND COMPLAINT
AND JOINT STIPULATION**

Plaintiff GenBioPro, Inc., moves for leave to amend its complaint, Dkt. No. 1, under Federal Rule of Civil Procedure 15(a)(2) by filing Plaintiff's First Amended Complaint, attached as Exhibit A. Plaintiff's purpose in amending its complaint is to bring proceedings in this Court to a close and to facilitate an appeal of the remaining issues in this litigation.

Plaintiff GenBioPro, Inc., and Defendants Kristina Raynes, in her official capacity as Prosecuting Attorney for Putnam County, and Patrick Morrissey, in his official capacity as Attorney General of the State of West Virginia, stipulate and consent to the filing of Plaintiff's First Amended Complaint under Federal Rule of Civil Procedure 15(a)(2). The Amended Complaint, attached as Exhibit A, no longer brings a federal preemption challenge to West Virginia's laws prohibiting providers from prescribing mifepristone via telemedicine, W. Va. Code §§ 30-1-26(b)(9), 30-3-13a(g)(5). Other than this change, the Amended Complaint is substantively identical to the Original Complaint Plaintiff filed on January 25, 2023, Dkt. No. 1. A redline comparison showing differences between the Original Complaint and Amended Complaint is

attached for the Court's convenience as Exhibit B.

Plaintiff has met and conferred with Defendants, and all parties consent to this motion. Defendants agree to waive notice and service of the Amended Complaint.

The parties jointly stipulate and agree that Plaintiff will no longer challenge West Virginia Code sections 30-1-26(b)(9) and 30-3-13a(g)(5) — the statutes governing prescribing mifepristone by telemedicine — as federally preempted. Plaintiff dismisses its preemption challenge to sections 30-1-26(b)(9) and 30-3-13a(g)(5) with prejudice.

As to the remaining claims, the parties stipulate that the Amended Complaint presents no new bases for relief. The parties stipulate that the Court's memorandum opinions and orders on the motions to dismiss, Dkt. Nos. 54, 66, apply to the claims in the Amended Complaint. The parties preserve all objections and their rights to appeal.

WHEREFORE, the parties jointly stipulate that:

1. Plaintiff's First Amended Complaint shall be the operative complaint in this case;
2. Plaintiff dismisses with prejudice its federal preemption challenge to West Virginia Code sections 30-1-26(b)(9) and 30-3-13a(g)(5); and
3. Because the Amended Complaint presents no new bases for relief, the Court's memorandum opinions and orders on the motions to dismiss, Dkt. Nos. 54, 66, apply to the Amended Complaint.

Dated: October 18, 2023

Respectfully submitted,

PATRICK MORRISEY

West Virginia Attorney General

/s/ Curtis R. A. Capehart (by permission)

Douglas P. Buffington, II (WV Bar # 8157)

Chief Deputy Attorney General

Curtis R. A. Capehart (WV Bar # 9876)

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*Counsel for Defendant Patrick Morrisey, in his
official capacity as Attorney General of the State
of West Virginia*

KRISTINA RAYNES

Putnam County Prosecuting Attorney

/s/ Jennifer Scragg Karr (by permission)

Jennifer Scragg Karr (WV Bar # 8051)

Assistant Prosecuting Attorney

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*Counsel for Defendant, Kristina Raynes, in her
official capacity as Prosecuting Attorney for
Putnam County*

GENBIOPRO, INC.

/s/ Anthony J. Majestro

Anthony J. Majestro (WV Bar # 5165)

Christina L. Smith (WV Bar # 7509)

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Counsel for Plaintiff, GenBioPro, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of October, 2023, I electronically filed the foregoing stipulation with the Clerk of Court and all parties using the CM/ECF System.

/s/ Anthony J. Majestro

Anthony J. Majestro